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No. 01–1447

In the Supreme Court of the United States

OCTOBER TERM, 2001

JOHN HOFFMAN AND MICHAEL HAHALYAK, PETITIONERS,
v.
JAMES JEFFORDS, RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT UNITED STATES SENATOR JAMES M. JEFFORDS IN OPPOSITION TO THE PETITION FOR CERTIORARI

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MAY 2002.

QUESTIONS PRESENTED

1. Whether the district court correctly held that plaintiffs lacked Article III standing to bring this suit, which sought an order compelling United States Senator James M. Jeffords to affiliate with the Republican Party, and make that affiliation public in caucusing in the Senate, in order to shift control of the Senate from the Democratic to the Republican Party and restore the Republican legislative agenda.

2. Whether the Speech or Debate Clause, art. I, §6, cl. 1, the political question doctrine, or the failure of the complaint to state a claim upon which relief can be granted also bars this action.

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BRIEF FOR RESPONDENT UNITED STATES SENATOR JAMES M. JEFFORDS IN OPPOSITION TO THE PETITION FOR CERTIORARI

Respondent United States Senator James M. Jeffords submits this brief in opposition to the petition for a writ of certiorari before judgment filed by petitioners John Hoffman and Michael Hahalyak.

STATEMENT OF THE CASE

This petition arises out of a complaint filed by John Hoffman in the United States District Court for the District of Columbia. An amended complaint added plaintiff Michael Hahalyak. Describing themselves as Pennsylvania Republican voters, petitioners alleged that United States Senator James M. Jeffords violated the 14th and 17th Amendments to the United States Constitution, as well as unnamed Vermont state statutes, by leaving the Republican Party during his term of office. Amd. Compl. ¶10.

Petitioners alleged that they had been "adversely impacted" by Senator Jeffords becoming an Independent "in that the Republican program to be ushered in by the Re-

publican party nationally has been seriously obstructed by the defendant's unauthorized act in altering party affiliation." *Id.* ¶1. They further claimed that Senator Jeffords' decision to change parties "destroys the confidence of the electorate," "destroys the foundation of good government by lowering the standard of integrity of its representatives," "promotes party raiding which would seriously weaken the stability of the elective process," "undermines the very purpose of anti-raiding statutes," "eliminates the heart of a well balanced political party," and lacked the approval of those who voted for him in the Vermont elections. *Id.* ¶10.

Petitioners asked the district court to order Senator Jeffords to affiliate with the Republican Party, and make that affiliation public in caucusing in the Senate, in order to shift control of the Senate from the Democratic to the Republican Party and restore the Republican legislative agenda.

In a nineteen-page memorandum opinion, the district court granted Senator Jeffords' motion to dismiss the amended complaint and denied the petitioners' motion for summary judgment. *Hoffman v. Jeffords*, 175 F. Supp. 2d 49 (D.D.C. 2001)(Lamberth, J.). The district court held that the petitioners did not satisfy any of the three irreducible minimum requirements to establish Article III standing. *Id.* at 54-60. Other grounds, not addressed by the district court because the petitioners lacked Article III standing, *id.* at 60, also required dismissal of the amended complaint: (i) the Speech or Debate Clause, art. I, §6, cl. 1, of the Constitution immunized Senator Jeffords from suit; (ii) the political question doctrine barred the suit; and (iii) the amended complaint failed to state a claim upon which relief could be granted.

Petitioners appealed the judgment to the United States Court of Appeals for the District of Columbia Circuit. No. 02-5006. In the court of appeals, petitioners moved to hold their appeal in abeyance pending disposition by this Court of their petition for writ of certiorari before judgment, while Senator Jeffords moved for summary affirm-

ance of the district court's dismissal of the amended complaint. At this time, the court of appeals has not decided either motion.

REASONS FOR DENYING THE WRIT

The petition for a writ of certiorari before judgment should be denied because it fails to show "that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court." Sup. Ct. Rule 11. Here, the court of appeals remains the most appropriate and efficient forum for appellate review of the district court's straightforward and inescapable judgment that the petitioners lack Article III standing to bring this suit.

The clear application of these settled legal principles to this case means that it would not present any "compelling reason" for even a post-judgment grant of certiorari under Rule 10. *A fortiori*, this case does not amount to that exceptionally rare occurrence in which the Court should review a case still pending in the court of appeals in order to resolve an issue of great constitutional significance. *E.g., Mistretta v. United States*, 488 U.S. 361, 371 & n.6 (1989) (addressing constitutionality of Federal Sentencing Commission to rectify "disarray" in lower court decisions).

I. Article III of the Constitution confines the jurisdiction of the federal courts to the resolution of actual "Cases" and "Controversies." U.S. Const. art. III, § 2. To meet this threshold jurisdictional requirement, petitioners must demonstrate that they suffered (i) an "'injury in fact' -- an invasion of a judicially cognizable interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical"; (ii) a causal connection between the injury alleged and the conduct complained of; and (iii) a likelihood that the injury is redressable through a favorable disposition of the matter. *Bennett v. Spear*, 520 U.S. 154, 167 (1997). The district court correctly held that petitioners failed to satisfy any of these three irreducible constitutional minimum requirements.

First, petitioners did not establish "injury in fact." The gravamen of their claim -- a purported "obstruction" of the "Republican program" -- alleges a generalized diminution of political power that cannot establish "injury in fact" as to them. Amd. Compl. ¶¶1, 6; *Raines v. Byrd*, 521 U.S. 811, 821, 826 (1997) (stating that a "claim of standing . . . based on a loss of political power" or "diminution of . . . official power" is too abstract to state a cognizable claim under Article III). Nor did they suffer any "injury in fact" from Senator Jeffords' alleged violation of Vermont election laws. As Pennsylvania residents, petitioners had "absolutely no personal stake whatsoever" in Vermont elections. *Hoffman*, 175 F. Supp. 2d at 56. Furthermore, petitioners did not allege, and "utterly failed" to explain, how they suffered any personal injury resulting from the claimed abridgment of their First Amendment right to freedom of association. *id.*; *see also Haitian Refugee Center v. Gracey*, 809 F.2d 794, 800 (D.C. Cir. 1987) (holding that a "party cannot have standing on the basis of a legal right he does not claim is violated" in the complaint). Petitioners' remaining allegations concerning the diminished "confidence of the electorate," the "stability of the elective process," destruction of the "foundation of good government," and other similar claims are quintessential "generalized grievances" that cannot confer standing. *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 475 (1982). "Abstract injury is not enough," *O'Shea v. Littleton*, 414 U.S. 488, 494 (1974), and the district court correctly determined that the petitioners alleged nothing more.

Second, the district court correctly held that none of the petitioners' alleged injuries was "fairly traceable" to Senator Jeffords, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992), as opposed to "some third party not before the court." *Simon v. Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 41-42 (1976). Whether the objectives of the "Republican program" are achieved is "fairly traceable" to the collective actions of both Houses of Con-

gress and the President, not a single Senator. *Hoffman*, 175 F. Supp. 2d at 58. Because petitioners failed to identify any specific injuries caused by alleged violations of the First Amendment or Vermont election law, such injuries are not fairly traceable to Senator Jeffords. *Id.* Nor are harms associated with petitioners' generalized grievances. Furthermore, to the extent there exists any diminution in the "confidence of the electorate" or the "stability of the elective process," it cannot be said that such injuries are "fairly traceable" to Senator Jeffords' decision to leave the Republican Party. *Id.* at 58-59.

Third, the district court correctly held that petitioners' alleged injuries would not be redressed by a favorable decision in this case. *Id.* at 59. Even assuming Republican control of the Senate, it is not "likely" that unspecified Republican political objectives would be achieved because "there are numerous factors, independent of Senator Jeffords, that can affect whether a particular piece of legislation is enacted." *Id.* Similarly, petitioners' purported First Amendment and Vermont election law violations cannot be redressed because they were neither alleged in the amended complaint nor explained in any of the petitioners' motion papers. *Id.* The same is true with respect to petitioners' generalized grievances. Reinstating the Republican majority in the Senate would not itself restore "confidence in the electorate," rebuild the "foundation of good government," or remedy any of petitioners' other nonjusticiable allegations of generalized harms. *Id.* at 59-60.

II. Dismissal was also mandated by the Speech or Debate Clause, art. I, §6, cl. 1, of the Constitution, which provides that "for any Speech or Debate in either House, [Senators and Representatives] shall not be questioned in any other Place." The Clause affords absolute immunity from judicial inquiry into "the deliberative and communicative processes by which Members participate in . . . matters which the Constitution places within the jurisdiction of either House." *Gravel v. United States*, 408 U.S. 606, 625 (1972). Petitioners unabashedly seek to question

Senator Jeffords about his "speech" with his Senate colleagues stating his political affiliation and his decision to "debate" pending business in the Democratic, rather than the Republican, caucus. Such speech and associative activities in party conferences are at the very core of the Senate's "deliberative and communicative processes by which Members participate in" the Senate's legislative proceedings. *Id.* Senator Jeffords' attendance and participation in a party caucus in the Senate, therefore, "shall not be questioned in any other Place."

The political question doctrine also supported dismissal. *First*, there has been "a textually demonstrable constitutional commitment of th[is] issue to a coordinate political department," *Baker v. Carr*, 369 U.S. 186, 217 (1962), because adjudication of this suit would improperly intrude into the constitutionally committed responsibilities of the Senate to choose its officers, art. I, § 3, cl. 5, determine its rules of proceedings, art. I, § 5, cl. 2, and judge elections, returns, and qualifications of its Members, art. I, § 5, cl. 1. *Second*, there is a "lack of judicially discoverable and manageable standards for resolving" this case, *Baker*, 369 U.S. at 217, because there is simply no principle from which a court could derive guidance in order to take command of the Senate's internal organization to overturn Democratic control of the Senate and reinstate a Republican majority. *Third*, this action cannot be adjudicated in accord with the "respect due coordinate branches of government," *id.*, because the relief petitioners request would require this Court to intrude deeply into the organization and management of the Senate's internal affairs.

This suit is also subject to dismissal on the merits. The First, Fourteenth, and Seventeenth Amendments to the Constitution do not prohibit a United States Senator from changing his party affiliation during his term of office. Nor do the Vermont election laws cited by petitioners. Such laws do not purport to regulate any conduct occurring after balloting and elections, and in any event, could not be interpreted so as to impose a restriction of party

membership or loyalty on a senator's service. *See U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 806 (1995) (explaining that the "States lack the power to add qualifications" for service in the Congress to those fixed in the Constitution).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari before judgment should be denied.

Respectfully submitted,

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